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Supreme Court of the United States

OCTOBER TERM, 1957.

No. 980

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deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans, Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, and New Orleans Public Service Inc.,

Petitioners,

versus

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ALVIN J. LISKA,
City Attorney,
Trial Attorney,
JOSEPH H. HURNDON,
Assistant City Attorney,
ERNEST L. SALATICH,
Assistant City Attorney,
JACK P. F. GREMILLION,
Attorney General for State of Louisiana,
WILLIAM P. SCHULER,
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GIBBONS BURKE,
A. J. WAECHTER,
FLOYD W. LEWIS,
Attorneys for New Orleans Public Service Inc.

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SUPREME COURT OF THE UNITED STATES

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deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans, Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, and New Orleans Public Service Inc.,

Petitioners,

versus

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioners, deLesseps S. Morrison, Individually and as Mayor of the City of New Orleans, Provosty A. Dayries, Individually and as Superintendent of Police of the City of New Orleans, and New Orleans Public Service, Inc. pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on February 19, 1958.

CITATIONS TO OPINIONS BELOW.

The decree of the United States District Court for the Eastern District of Louisiana, Honorable J. Shelly Wright presiding and the judgment amending said decree are unreported but are printed in Appendix "B" hereto, pages 12, et seq. The opinion and decree of the United States Court of Appeals for the Fifth Circuit rendered and entered on February 19, 1958 are reported in 252 Fed. 2d, at page 102 and are printed in Appendix "B" hereto, pages 17, et seq.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 19, 1958 (Tr. p. 57). Rehearing was denied on March 28, 1958 (Tr. p. 70). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED.

Where the relief sought is in equity to enjoin the enforcement of a state penal statute can a federal court grant the relief prayed for in view of the doctrine set forth in *Douglas, et al. vs. The City of Jeannette (Penn.) et al.*, 319 U. S. 157, 63 S. Ct. 877, 87 L.Ed. 1324?

STATUTES INVOLVED.

Louisiana Revised Statutes of 1950, Sections 45:194, 195 and 196 and L.R.S. Sections 45:731, 732 and 733 providing for a system of equal but separate accommodations for white and colored races on public carriers in the

State of Louisiana printed herein in Appendix "A" at pages 9, et seq.

STATEMENT.

Respondents, Abraham L. Davis, Jr. and William R. Adams, on February 1, 1957, filed a complaint, pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure, for themselves and on behalf of all other negro citizens similarly situated, in the United States District Court for the Eastern District of Louisiana against de-Lesseps S. Morrison, individually and as Mayor of the City of New Orleans; Paul Burke; Fred J. Cassibry; Glen P. Classen; Walter M. Duffourc; James E. Fitzmorris, Jr. and Victor H. Schiro, individually and as Councilmen of the City of New Orleans; Paul L. Ristroph, individually and as Director of Utilities, Department of Utilities of the City of New Orleans; Provosty A. Dayries, individually and as Superintendent of Police of the City of New Orleans; and New Orleans Public Service, Inc. and George S. Dinwiddie, its president seeking a temporary and permanent injunction to enjoin and restrain the petitioners, their agents and employees from enforcing LSA R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733 of the State of Louisiana pursuant to which respondents and all other negro citizens of the City of New Orleans are segregated in and on the buses, street cars or street railroads and trolley buses of the New Orleans Public Service, Inc. on the ground that such statutes are null and void and in violation of the Fourteenth Amendment of the Constitution of the United States, and seeking a final judgment and decree declar-

ing LSA R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733 of the State of Louisiana unconstitutional and therefore null and void in that they deny to the plaintiffs and all other negro citizens of the City of New Orleans privileges and immunities of citizens of the United States, due process of law and equal protection of the laws secured by the Fourteenth Amendment of the Constitution of the United States and the rights and privileges secured to them by Sections 1981 and 1983 of Title 42 United States Code. (Tr. pp. 2-14.)

On March 22, 1957 Answers were filed on behalf of New Orleans Public Service, Inc. and George S. Dinwiddie. (Tr. pp. 15-20.)

On April 17, 1957 a hearing was held on the motion of certain defendants to dismiss. As a result of this hearing the Motion to Dismiss was granted as to Paul Burke, Fred J. Cassibry, Glenn P. Classen, Walter Duffourc, James E. Fitzmorris, Jr., Victor H. Schiro, individually and as Councilmen of the City of New Orleans and Paul E. Ristroph, individually and as Director of Utilities, Department of Utilities, City of New Orleans. (Tr. pp. 26-27.)

Answers were filed on behalf of petitioners, deLesseps S. Morrison, individually and as Mayor of the City of New Orleans and Provosty A. Dayries, individually and as Superintendent of Police of the City of New Orleans on April 23, 1957. (Tr. pp. 27-28.)

On May 2, 1957 by joint motion of attorneys representing plaintiffs and attorneys representing defendant,

George S. Dinwiddie, the complaint was dismissed as to defendant, George S. Dinwiddie. (Tr. pp. 29-30.)

Respondents, on May 6, 1957 moved the Court to enter a summary judgment for plaintiffs. (Tr. pp. 30-31.)

On May 13, 1957, petitioners filed opposition to Respondents' Motion for Summary Judgment. (Tr. pp. 36-37.)

On May 15, 1957 Summary Judgment was rendered declaring all state statutes requiring segregation on transportation facilities in the City of New Orleans and particularly those transportation facilities operated by the New Orleans Public Service Inc. unconstitutional and therefore invalid. (Tr. pp. 41-42.)

Judgment was granted as prayed for and the permanent injunction issued.

On May 24, 1957 an Order consistent with the Court's findings was issued. The judgment contained a provision that it should "become effective when it shall have become final after exhaustion of appeals." (Tr. pp. 42-44.)

Petitioners, on May 31, 1957, filed a Motion for a Rehearing and a New Trial which Motion was denied after hearing on June 12, 1957 and judgment was entered on June 17, 1957 denying same. (Tr. pp. 44-51.)

On June 21, 1957 petitioners gave Notice of Appeal (Tr. pp. 51-52) and on June 25, 1957 designated in writ-

ing to the Clerk of Court that the entire record was to be used on Appeal. (Tr. pp. 53-54.)

After the submission of briefs and oral argument Circuit Judges Hutcheson, Tuttle and Jones, on February 19, 1958 issued their opinion and entered judgment affirming the decision of the District Court (see Tr. pp. 57-60 and appendix hereto). Thereafter, petitioners filed a petition for rehearing on March 11, 1958 (Tr. pp. 61-63). On March 28, 1958 the Court entered an Order denying the petition for rehearing. (Tr. p. 70.)

REASONS FOR GRANTING WRIT.

The decree of the Court of Appeals affirming the judgment of the District Court which issued a permanent injunction restraining petitioners from enforcing Louisiana Revised Statutes *R.S. 45:195-196, inclusive and R.S. 45:731-733 inclusive* is in conflict with a principle of law firmly imbedded in the jurisprudence of this Court. This Court has laid down the principle that federal courts of equity will not restrain the enforcement of state criminal statutes save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is clear and imminent. *Douglas, et al. vs. City of Jeannette (Pennsylvania) et al.*, 319 U.S. 157, 63 S. Ct. 877, 87 L. Ed. 1324 (1943).

The statutes involved herein are penal or criminal in nature and can only be enforced by arrest and prosecution of persons violating same. The relief sought by respondents is to enjoin petitioners from enforcing said

statutes which in effect would be to enjoin petitioners from arresting or prosecuting persons who violate same. Respondents cannot show and have not shown that they will suffer any injury other than that incidental to every criminal proceeding brought lawfully and in good faith; which under the Douglas Decision is insufficient to call for the interposition of a Court of equity to grant the relief sought.

It is submitted that *Douglas, et al, supra,* decided by this Court cannot be distinguished from the instant case; the issues are identical.

The Court of Appeals erred in not adhering to said decision.

To deviate from the precedent set by the Douglas decision as the Court of Appeals has done in the instant case would be to burden Federal courts with a multitude of suits which at present they need not entertain. Every individual aggrieved by a state penal statute will seek injunctive relief in Federal court placing upon Federal courts the burden of determining the validity of state penal legislation even before an arrest is made pursuant to said statutes.

It is only when the state itself, through its courts, has refused to recognize the constitutional rights of the individual being prosecuted for the violation of a state penal statute should this court pass on the validity of said statute.

CONCLUSION.

For the foregoing reasons this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ALVIN J. LISKA,
City Attorney,
Trial Attorney,
JOSEPH H. HURNDON,
Assistant City Attorney,
ERNEST L. SALATICH,
Assistant City Attorney,
JACK P. F. GREMILLION,
Attorney General for State of Louisiana,
WILLIAM P. SCHULER,
Assistant Attorney General for State of Louisiana,
GIBBONS BURKE,
A. J. WAECHTER,
FLOYD W. LEWIS,
Attorneys for New Orleans Public Service Inc.

PROOF OF SERVICE.

I, ALVIN J. LISKA, one of the attorneys for petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing Petition for Writ of Certiorari on A. P. Tureaud, Esquire, Counsel for respondents, by mailing a copy thereof, postage prepaid, addressed to his office at 1821 Orleans Avenue, New Orleans, Louisiana.

Dated this .... day of May, 1958.

.....

ALVIN J. LISKA,
City Attorney,
Attorney for Petitioners.

APPENDIX "A".

Louisiana Revised Statutes.

45:194. "All persons carrying passengers for hire in their buses, carriages or vehicles in this state shall provide equal but separate accommodations for the white and colored races by designating separate seats or compartments so as to secure separate accommodations for the white and colored races; no person shall be permitted to occupy seats or compartments other than the ones so designated."

45:195. "The person in charge of busses, carriages or vehicles mentioned in R.S. 45:194 shall assign each passenger to a seat or compartment used for the race to which such passenger belongs.

"Any passenger insisting upon going into a seat or compartment to which by race he does not belong, shall be fined twenty-five dollars or imprisoned for not more than thirty days.

"If any passenger refuses to occupy the seat or compartment to which he is assigned by the person in charge of such bus, carriage or vehicle, the person in charge may refuse to carry the passenger on his car or cars, and for such refusal neither he nor the person he represents shall be held for damages in this state.

"Any person in charge of a bus, carriage or vehicle insisting on assigning a person to a seat or compartment other than the one set aside for the race to which the passenger belongs, shall be fined twenty-five dollars or imprisoned for not more than thirty days."

45:196. "All officers and directors of persons carrying passengers for hire over the public highways of the state, refusing or neglecting to comply with the provisions of R.S. 45:194 through 45:195 shall be fined not less than fifty dollars, nor more than three hundred dollars, or imprisoned for not less than ten days nor more than sixty days, or both."

45:731. "All street railway companies carrying passengers in cars in this state shall provide equal but separate accommodations for the white and colored races by providing two or more cars or by dividing the cars by wooden or wire screen partitions so as to secure separate accommodations for the white and colored races. No person shall be permitted to occupy seats in cars or compartments other than the ones assigned to them on account of the race to which they belong."

45:732. "The officers of street railway cars shall assign each passenger to the car or compartment used for the race to which the passenger belongs.

"Any passenger insisting upon going into a car or compartment to which by race he does not belong shall be fined twenty-five dollars, or imprisoned for not more than thirty days, and any officer of any street railway insisting on assigning a passenger to a car or compartment other than the one set aside for the race to which the passenger belongs, shall be fined twenty-five dollars, or imprisoned for not more than thirty days.

"If any passenger refuse to occupy the car or compartment to which he is assigned by the officer of such street railway, the officer may refuse to carry such passenger on his car, and for such refusal neither he nor the street railway company which he represents shall be liable for damages."

45:733. "All officers and directors of street railway companies refusing to comply with R.S. 45:731 and 45:732 shall be fined not less than one hundred dollars, or imprisoned for not less than sixty days nor more than six months. Any conductor or other employee of a street railway car having charge of same, who refuses to carry out the provisions of R.S. 45:731 and 45:732 shall be fined not less than twenty-five dollars, or imprisoned for not less than ten days nor more than thirty days for each offense. All street railway corporations carrying passengers in this state shall keep this law posted in a conspicuous place in each car and at their transfer stations.

"Nothing in R.S. 45:731 and 45:732 shall apply to nurses attending children of the other race."

APPENDIX "B".

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 6418, CIVIL ACTION.

ABRAHAM L. DAVIS, JR., et al.,

versus

de LESSEPS S. MORRISON, etc.

JUDGMENT.

This cause came on for hearing on plaintiffs' motion for summary judgment.

The Court, having carefully considered the pleadings, the record heretofore made in this cause, oral arguments and submission of the briefs by all parties and, after being fully advised in the premises, found in its opinion handed down orally on May 15, 1957 that the enforced segregation of Negro passengers solely because of race and/or color on buses, street cars, or street railways and trolley buses operating within the City of New Orleans, State of Louisiana, as required by La. R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45:733, violates the Constitution and laws of the United States.

Now in accordance with that opinion it is ORDERED, ADJUDGED AND DECREED that all laws of the State

of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses operating within the City of New Orleans are unconstitutional and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendants, their successors in office, assigns, agents, servants, employees and persons acting on their behalf, be and they are hereby permanently enjoined and restrained (1) from enforcing the aforesaid statutes requiring plaintiffs and other Negroes similarly situated to submit to segregation in the use of the buses, street cars, street railways and trolley buses, in the City of New Orleans, and (2) from doing any acts or taking any action which would require any public transportation facility, or its drivers, to segregate white and Negro passengers in the operation of buses, street cars, street railways, or trolley buses in the City of New Orleans, State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this judgment shall become effective when it shall have become final after exhaustion of appeals.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this judgment be served upon each of said defendants.

IT IS FURTHER ORDERED that defendants pay all costs.

J. SKELLY WRIGHT,
United States District Judge.

New Orleans, Louisiana,
May 24, 1957.

TO: DeLesseps S. Morrison, Individually and as Mayor of the City of New Orleans.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

No. 6418, CIVIL ACTION.

ABRAHAM L. DAVIS, JR., et al.,

versus

de LESSEPS S. MORRISON, etc.

IT IS ORDERED that the judgment formerly entered herein on May 24, 1957 be and the same is hereby amended as follows:

AMENDED JUDGMENT.

This cause came on for hearing on plaintiffs' motion for summary judgment.

The Court, having carefully considered the pleadings, the record heretofore made in this cause, oral arguments

and submission of the briefs by all parties and, after being fully advised in the premises, found in its opinion handed down orally on May 15, 1957 that the enforced segregation of Negro passengers solely because of race and/or color on buses, street cars, or street railways and trolley buses operated by the New Orleans Public Service in the State of Louisiana, as required by La. R.S. 45:194, 45:195, 45:196, 45:731, 45:732 and 45733, violates the Constitution and laws of the United States.

Now in accordance with that opinion is it ORDERED, ADJUDGED and DECREED that all laws of the State of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses are unconstitutional and void in that they deny and deprive plaintiffs and other Negro citizens similarly situated of the equal protection of the laws and due process of law secured by the Fourteenth Amendment to the Constitution of the United States and rights and privileges secured by Title 42, United States Code, Sections 1981 and 1983.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the defendants, their successors in office, assigns, agents, servants, employees and persons acting on their behalf, be and they are hereby permanently enjoined and restrained (1) from enforcing the aforesaid statutes requiring plaintiffs and other Negroes similarly situated to submit to segregation in the use of the buses, street cars, street railways and trolley buses, and (2) from doing any acts or taking any action which would require

any public transportation facility, or its drivers, to segregate white and Negro passengers in the operation of buses, street cars, street railways, or trolley buses in the State of Louisiana.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that this judgment shall become effective when it shall have become final after exhaustion of appeals.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that a copy of this judgment be served upon each of said defendants.

IT IS FURTHER ORDERED that defendants pay all costs.

J. SKELLY WRIGHT,
United States District Judge.

New Orleans, Louisiana,
June 14, 1957.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16886

deLESSEPS S. MORRISON, Individually and as Mayor of the City of New Orleans, PROVOSTY A. DAYRIES, Individually and as Superintendent of Police of the City of New Orleans and NEW ORLEANS PUBLIC SERVICE, INC.

Appellants,

versus

ABRAHAM L. DAVIS, JR. and WILLIAM R. ADAMS,

Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 19, 1958.)

Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

PER CURIAM: This appeal from a final injunction following a summary judgment for the plaintiffs declaring unconstitutional all laws of the State of Louisiana requiring segregation of the races on buses, street cars, street railways or trolley buses, and enjoining defendant officials and public service corporations from enforcing

such statutes is controlled in all respects by *Browder et al v. Gayle et al,* the City of Montgomery bus case, 142 F. Supp. 707, affirmed without opinion by the Supreme Court in 352 U. S. 903.

That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C.A. §1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the Browder case in which the same contention was advanced. To the extent that this is inconsistent with *Douglas v. City of Jeannette, et al,* 319 U.S. 157, we must consider the earlier case modified. Moreover we think the trial court here properly held: "It is not the Court's view that in our civilization it is necessary to have incidents requiring arrests to have the rights of people declared." These plaintiffs are not being prosecuted; they have not violated the state law; they are seriously affected by the provision of the statute which places a criminal penalty on the street car operators who permit them to travel on a street car without complying with the unconstitutional statute. They are asking relief from such constraint. Since all transportation can be denied them under the statute unless they obey the ille-

gal requirement, it is not even apparent that they could put themselves in position to be arrested and prosecuted even if they sought to test their constitutional rights in that manner, which we hold they do not have to do.

The only other contention raised by appellants here are either ruled by the cases affecting admission to state educational institutions, or are so plainly and fully disposed of in the Montgomery bus case as not to require further elaboration here.

The judgment is AFFIRMED.